IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 141 of 1995

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
INDRAJITSINH AJITSINH - Opponent(s)

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Appearance :
MR SP HASURKAR, APP, for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 26th May 1994 passed by learned Chief Judicial Magistrate, First Class, Jamnagar in Criminal case No.2004/1990 whereby the learned Judge has acquitted the respondent of the offences under section 326 of IPC as alleged against him.

2. The prosecution case in short is that the complainant was staying with her husband and she is having three children. The complainant's husband is working in Jamnagar Woolen Mills. According to the prosecution, on 30.4.1990 in the morning the respondent accused had gone to her house and told her that if she will not marry him, he would kill her husband and because of this threat the complainant’s husband could not go for duty for about one and half months. On the date of incident at about 8 am the complainant’s husband and his brother had gone to village and at about 11 am the respondent had gone to her house and asked her to

marry him. She refused and thereupon the respondent poured acid on her face and hand as well as on the face of her son Virendra and also her daughter. The complainant and children shouted for help and the respondent ran away. Thereafter the complaint came to be lodged against the respondent for the offence under section 326 of IPC.

3. After recording necessary evidence, learned Magistrate acquitted the respondent of the offence with which he was charged. It is against the aforesaid judgement and order the State has preferred the present appeal.

4.0 Mr. S.P. Hasurkar, learned APP, appearing for the appellant submitted that the learned Magistrate has failed to appreciate that as per the medical evidence as well as the evidence of complainant and her son, they had received injuries on their body which was possible by spraying acid.

4.1 He submitted that the learned Magistrate has given undue importance to minor contradictions in the evidence of prosecution witness and acquitted the

accused.

4.3 He further submitted that there are direct and indirect evidence to connect the respondent-accused with the crime and the learned Magistrate ought not to have acquitted the respondent.

5. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the

> lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

6. I have heard learned Advocate for the appellant and perused the judgement and relevant documetns. As a result of hearing and perusal of the record it is found from the record that there are material contradictions in the evidence of prosecution. The trial court has found that there are contradictions in the evidence of complainant, his son and other witnesses. No evidence was produced on record to show that it is the respondent who has sprinkled the acid on the complainant and her children. The trial court was of the opinion that merely on medical certificate the respondent cannot be convicted. Thus, the

trial court has come to the conclusion that the prosecution has not established the case against the respondent beyond reasonable doubt.

6.2 In the present appeal learned Advocate for the appellant is not in a position to show any evidence to take a contrary view of the matter. I am, therefore, of the view that there is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to

> repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

7. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]

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